

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

February 21, 2024

TRANSCRIPT EXCERPT - EXAMINATION OF MICHAEL O'ROURKE - DAY 2
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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And

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(Excerpt commenced at 9:43 a.m.)

(Jury seated at 9:43 a.m.)

THE COURT: Good morning, everyone.

ALL PARTIES: Good morning.

THE COURT: Welcome back.

The record will reflect that all our jurors are present.

I remind the witness that he's still under oath.

And I think we're ready to begin cross-examination.

MR. MacKAY: May I proceed, Your Honor?

THE COURT: Yes.

M I C H A E L O ' R O U R K E, having been previously duly called and sworn, continued to testify as follows:

CROSS-EXAMINATION BY MR. MacKAY:

Q. Good morning, Mr. O'Rourke

A. Good morning, Mr. MacKay.

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1 Q. How are you?

2 A. Good. How are you?

3 Q. I'm well, thanks for asking.

4 All right. So you testified here on direct yesterday,

5 and then you had the opportunity go home, correct?

6 A. Yes.

7 Q. Now when you testified yesterday, do you recall you

8 needed your memory refreshed at least once during your

9 testimony?

10 A. Yes.

11 Q. Okay. And I presume that's because the incident we're

12 all talking about happened now over a decade ago, correct?

13 A. That's correct.

14 Q. November of 2012, correct?

15 A. That's correct.

16 Q. And you recall when you were here in court yesterday,

17 Mr. Tripi refreshed your memory by pointing you to your grand

18 jury testimony; do you remember that?

19 A. I do.

20 Q. Okay. And that took place, you went into the grand jury

21 and you testified in June of 2020, correct?

22 A. That's correct.

23 Q. Okay. Now, at that point in time, when you testified

24 before the grand jury, you had with you a case report,

25 there's about 23 pages long; do you recall that?

09:45AM 1 A. I do.

09:45AM 2 Q. Okay. And that contained mostly the documents that the
09:45AM 3 state police had from the case, correct?

09:45AM 4 A. That's correct.

09:45AM 5 Q. Had some search warrant material in it, correct?

09:45AM 6 A. The documents I believe I had were a copy of the search
09:45AM 7 warrant, and a copy of the booking sheet, and several
09:45AM 8 photographs of the defendants.

09:45AM 9 Q. Okay. Do you recall either having at that time or having
09:45AM 10 looked at before you went into the grand jury -- about a --
09:45AM 11 call it a case report, it's about five paragraphs long?

09:45AM 12 A. I did not prepare that report, so I can't recall if I
09:45AM 13 reviewed that report or not.

09:45AM 14 Q. Would it help to refresh your recollection to take a look
09:45AM 15 at that report to see if that was something you reviewed
09:45AM 16 before you testified?

09:45AM 17 A. Yes.

09:45AM 18 **MR. MacKAY:** Okay. Ms. Champoux, can we, for the
09:46AM 19 witness only, put 3510C on the screen?

09:46AM 20 **BY MR. MacKAY:**

09:46AM 21 Q. Can you read that, or -- I can see you getting your
09:46AM 22 glasses out.

09:46AM 23 A. Yep.

09:46AM 24 Q. So if you look at that silently to yourself, and then
09:46AM 25 look back up at me.

09:46AM 1 A. I've seen that report before. I didn't prepare it, so I
09:46AM 2 can't recall exactly if I reviewed it before a grand jury or
09:46AM 3 not.

09:46AM 4 **MR. MacKAY:** And, Ms. Champoux, you can take down
09:46AM 5 3510C. Okay.

09:46AM 6 **BY MR. MacKAY:**

09:46AM 7 Q. But the document, is it fair to say that the documents
09:46AM 8 you did have before you in the grand jury and what you
09:46AM 9 reviewed before you went into the grand jury did not include
09:46AM 10 any notes or summary of any meeting with Mr. Bongiovanni?

09:46AM 11 A. That's correct.

09:46AM 12 Q. All right. And you had met with the government about six
09:47AM 13 months before going into the grand jury; does that sound
09:47AM 14 accurate?

09:47AM 15 A. Yes.

09:47AM 16 Q. Okay. Back in December of 2019 was your meeting with
09:47AM 17 them?

09:47AM 18 A. Yes.

09:47AM 19 Q. And you spoke with, I assume, some other type of law
09:47AM 20 enforcement, correct?

09:47AM 21 A. Yes, federal law enforcement.

09:47AM 22 Q. Okay. And perhaps prosecutors at that time?

09:47AM 23 A. I don't recall who was at the meeting other than at least
09:47AM 24 one agent from his.

09:47AM 25 Q. Okay. And at that time, you learned a little bit about

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1 what this case was about, correct?

2 A. Yeah. I learned a small amount, I guess my involvement.

3 Q. I mean, you knew it was focused somewhere around this

4 November 25th, 2012 arrest, correct?

5 A. Yes.

6 Q. Okay. So let's go to that.

7 You, as part of the New York State Police, participate in

8 this arrest on 17 Elmview Place on November 25th, 2012,

9 correct?

10 A. That's correct.

11 Q. I think you told us on direct, in sum and substance what

12 happens is, you get some information from Illinois that calls

13 the New York State Police to act here in Buffalo, correct?

14 A. Yes.

15 Q. Simple way of explaining it, drugs are getting dropped

16 off and you make a bust right after that happens, correct?

17 A. That's true.

18 Q. And in doing that, you, the State police, arrest both

19 Damien Abbate and Wayne Anderson, correct?

20 A. Yes.

21 Q. Your involvement was primarily focused on Wayne Anderson,

22 correct?

23 A. Yes.

24 Q. There was somebody else dealing with Damien Abbate,

25 correct?

09:48AM

1 A. That's correct.

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2 Q. That's Investigator Tony Palmer, correct?

09:48AM

3 A. That's correct.

09:48AM

4 Q. And generally you need -- you can't deal with all the

09:48AM

5 defendants on the scene at once, correct?

09:48AM

6 A. That's true.

09:48AM

7 Q. Okay. Now, place him in handcuffs, Mr. Anderson,

09:49AM

8 correct?

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9 A. That's correct.

09:49AM

10 Q. You get him into your vehicle, your police vehicle,

09:49AM

11 correct?

09:49AM

12 A. That's correct.

09:49AM

13 Q. And then you take him down to central booking downtown,

09:49AM

14 correct?

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15 A. That's right.

09:49AM

16 Q. And during that drive downtown, you talk to him a little

09:49AM

17 bit to try to -- to begin the conversation to potentially

09:49AM

18 flip him; is that fair to say?

09:49AM

19 A. Yes.

09:49AM

20 Q. Okay. And is it fair to say that oftentimes law

09:49AM

21 enforcement will talk during that ride because it can be a

09:49AM

22 stressful time for the defendant?

09:49AM

23 A. Yes.

09:49AM

24 Q. And this is a prime time when defendants often start

09:49AM

25 talking when they shouldn't, correct?

09:49AM 1 A. Sometimes it's the only opportunity we have to
09:49AM 2 communicate with the defendant before he goes to jail, so
09:49AM 3 it's always the best time to communicate with the defendant.
09:49AM 4 Q. And there's often a lot of pressure on the defendant at
09:49AM 5 that point in time, correct? Because they're facing charges,
09:50AM 6 correct?
09:50AM 7 A. Well, I'm sure they're in a very stressful situation.
09:50AM 8 They're in handcuffs, they're going to jail, they're probably
09:50AM 9 feeling quite a bit of pressure.
09:50AM 10 Q. So in your conversation with Mr. Anderson as he goes
09:50AM 11 downtown, he basically just said I'm not talking, I'm getting
09:50AM 12 a lawyer, correct?
09:50AM 13 A. Correct.
09:50AM 14 Q. And once an individual gets a lawyer, you know that you
09:50AM 15 can no longer speak directly to that individual, correct?
09:50AM 16 A. Correct.
09:50AM 17 Q. As members of law enforcement, you would now need to go
09:50AM 18 through that person's attorney, correct?
09:50AM 19 A. Correct.
09:50AM 20 Q. So the moment somebody says they want a lawyer, you can
09:50AM 21 no longer talk to them, correct?
09:50AM 22 A. Correct.
09:50AM 23 Q. Or the moment they enter a court and are either assigned
09:50AM 24 an attorney or they go out and pay an attorney who shows up,
09:50AM 25 you can't talk to them anymore, correct?

09:50AM

1 A. Correct.

09:50AM

2 Q. So if there's any cooperation to be done with an

09:50AM

3 individual or a defendant, after they get an attorney you've

09:51AM

4 got to go through that attorney, correct?

09:51AM

5 A. Correct.

09:51AM

6 Q. Because what happens with a court case is the prosecutor

09:51AM

7 is going to handle it once charges are filed, correct?

09:51AM

8 A. That's correct.

09:51AM

9 Q. And in this case, what happened is you take Mr. Abbate --

09:51AM

10 you took Mr. Anderson downtown, and you dropped off charges

09:51AM

11 at central booking, correct?

09:51AM

12 A. Correct.

09:51AM

13 Q. And so the jury understands, central booking is where

09:51AM

14 they hold somebody before they get arraigned for their first

09:51AM

15 time in court, correct?

09:51AM

16 A. Yes.

09:51AM

17 Q. And central booking can't hold somebody and received them

09:51AM

18 unless there is a charge, correct?

09:51AM

19 A. Yes.

09:51AM

20 Q. You've got to drop a defendant off with a charge or

09:51AM

21 they're gonna say we have nothing to hold this person,

09:51AM

22 correct?

09:51AM

23 A. Yeah, we fill out a booking sheet, and give the charges.

09:51AM

24 We also sign the felony complaint that's prepared by the

09:51AM

25 report technicians. And, so, he's charged at that point,

09:51AM 1 yes.

09:51AM 2 Q. Right. So -- so, Mr. Anderson is charged by the time you
09:52AM 3 drop him off at central booking, correct?

09:52AM 4 A. Yes.

09:52AM 5 Q. That's what that process facilitates, correct?

09:52AM 6 A. That's correct.

09:52AM 7 Q. And you mentioned a term felony complaint, correct?

09:52AM 8 A. That's correct.

09:52AM 9 Q. That is a document specific to New York State Court that
09:52AM 10 initially charges the defendant with some felony, correct?

09:52AM 11 A. That's right.

09:52AM 12 Q. So that's what Mr. Anderson was dropped off at Buffalo --
09:52AM 13 at the central booking with, correct?

09:52AM 14 A. That's correct.

09:52AM 15 Q. Okay. So it would absolutely be incorrect to say that
09:52AM 16 Wayne Anderson was not charged; is that a fair
09:52AM 17 characterization?

09:52AM 18 A. Yes.

09:52AM 19 Q. Okay. Now, I think you mentioned on your direct, do you
09:52AM 20 recall these defendants, Mr. Anderson and Mr. Abbate, being
09:52AM 21 charged with Class C felonies, correct?

09:52AM 22 A. Yes.

09:52AM 23 Q. And Class C felonies, I think you told us, are for
09:52AM 24 anything above 10 pounds of marijuana in New York State
09:52AM 25 Court, correct?

09:53AM 1 A. Yes.

09:53AM 2 Q. It's essentially the highest marijuana charge that the
09:53AM 3 state courts have that you can bring, correct?

09:53AM 4 A. The highest possession charge.

09:53AM 5 Q. Possession charge. So whether somebody's got 1,000
09:53AM 6 kilograms of marijuana or it's a little more than 10 pounds,
09:53AM 7 that's the charge they get for possession, correct?

09:53AM 8 A. That is correct.

09:53AM 9 Q. Okay. Now, you had experience with other drug cases with
09:53AM 10 other substances when you were at State police, correct?

09:53AM 11 A. Yes.

09:53AM 12 Q. There do exist higher level charges for other types of
09:53AM 13 substances, correct?

09:53AM 14 A. Yes.

09:53AM 15 **MR. TRIPI:** Objection. New York State penalties for
09:53AM 16 other charges. Relevance, 403.

09:53AM 17 **THE COURT:** Overruled.

09:53AM 18 **BY MR. MacKAY:**

09:53AM 19 Q. So, there are, for example, there are Class A2 and Class
09:53AM 20 B felonies, correct?

09:53AM 21 A. That's correct.

09:53AM 22 Q. And in sum and substance, those can carry more penalties
09:53AM 23 than a Class C felony, correct?

09:53AM 24 A. That's correct.

09:53AM 25 **THE COURT:** We're talking about penalties for drug

1 possession, is that what we're talking about?

2 **MR. MacKAY:** Yes, correct.

3 **BY MR. MacKAY:**

4 Q. You drop Mr. Anderson off at central booking, correct?

5 A. Yes.

6 Q. You gave him the paperwork so he can be charged, correct?

7 A. Yes.

8 Q. And the drugs are sent down to your State police

9 laboratory for testing, correct?

10 A. I believe they were, yes.

11 Q. Did you at some point in time see a lab report come back

12 noting that the substance was, in fact, marijuana?

13 A. No, I don't recall seeing a lab report.

14 Q. Okay. But evidence was taken from the scene of

15 17 Elmview Place, correct?

16 A. Yes. I've seen an evidence log, but again, I was

17 assisting on this case, I was not the, as we refer to, as the

18 case agent who would be responsible for accumulating all

19 those reports. But I did review a -- what we call a general

20 2 evidence record.

21 Q. Okay. But you didn't transport any evidence away from

22 the scene, correct?

23 A. That's correct.

24 Q. Just the defendant, correct?

25 A. Just the defendant.

09:55AM 1 Q. And when you were at 17 Elmview Place executing the
09:55AM 2 search warrant, Mr. Bongiovanni was not present at the scene,
09:55AM 3 correct?
09:55AM 4 A. That's right.
09:55AM 5 Q. There was no -- this was solely a State police
09:55AM 6 investigation here in Buffalo, correct?
09:55AM 7 A. Yes.
09:55AM 8 Q. With the exception of the Illinois State Police
09:55AM 9 component, this was New York State Police doing what it did
09:55AM 10 on that date at that location, correct?
09:55AM 11 A. That's correct.
09:55AM 12 Q. I think you mentioned it was Buffalo Police Department
09:55AM 13 may be involved with SWAT?
09:55AM 14 A. I don't believe the Buffalo Police Department was
09:55AM 15 involved.
09:55AM 16 Q. You guys have your own Special Weapons and Tactics team?
09:55AM 17 A. Yeah, it was the SORT team, Special Operations and Rescue
09:55AM 18 Team, I believe it stands for.
09:55AM 19 Q. Okay. So long story short, there's no DEA personnel on
09:55AM 20 the scene on November 25th, 2012?
09:55AM 21 A. No, there's not.
09:55AM 22 Q. And just to be clear, Mr. Bongiovanni doesn't reach out
09:55AM 23 to you at any point in time, for example, when you're driving
09:55AM 24 Mr. Anderson down to central booking, correct?
09:56AM 25 A. That's correct.

09:56AM 1 Q. You don't hear from him until several days later,

09:56AM 2 correct?

09:56AM 3 A. That's right.

09:56AM 4 Q. You approximated it to be 48 hours or so?

09:56AM 5 A. Yes.

09:56AM 6 Q. But let's back up. You leave Mr. Anderson at central

09:56AM 7 booking, and that's the process in your mind that starts a

09:56AM 8 State court case, correct?

09:56AM 9 A. That's correct.

09:56AM 10 Q. Because you filled out -- or, somebody has filled out a

09:56AM 11 felony complaint, and that will to your knowledge wind up

09:56AM 12 being handled by a State court prosecutor, correct?

09:56AM 13 A. Correct.

09:56AM 14 Q. And if there's a State court crime charged in Erie

09:56AM 15 County, New York, that's generally going to be the Erie

09:56AM 16 County District Attorney's Office, correct?

09:56AM 17 A. That's correct.

09:56AM 18 Q. The New York State Attorney Generals can do some

09:56AM 19 prosecution, but generally most crimes in Erie County, to

09:56AM 20 your knowledge, are going to be prosecuted by an Assistant

09:56AM 21 District Attorney, correct?

09:56AM 22 A. That's correct.

09:56AM 23 Q. And you actually now work at that office, correct?

09:57AM 24 A. That's correct.

09:57AM 25 Q. You work as an investigator assisting the office, and the

09:57AM 1 attorneys in particular, correct?

09:57AM 2 A. That's correct.

09:57AM 3 Q. So, so let's go to this meeting.

09:57AM 4 It's preceded by, you think, at least a phone call or two
09:57AM 5 from Mr. Bongiovanni to set the meeting up?

09:57AM 6 A. Yes.

09:57AM 7 Q. Okay. And then you have the meeting, it's at the CNET
09:57AM 8 office, at the State -- the old State office building,
09:57AM 9 correct?

09:57AM 10 A. That's right.

09:57AM 11 Q. That's where your headquarters were at the time, correct?

09:57AM 12 A. That was a satellite office, but yes.

09:57AM 13 Q. Okay. And it's your understanding, going into this
09:57AM 14 meeting, that it's going to focus in some fashion on Wayne
09:57AM 15 Anderson, correct?

09:57AM 16 A. That's correct.

09:57AM 17 Q. Now when you actually have the meeting, Wayne Anderson is
09:57AM 18 not present, correct?

09:57AM 19 A. That's right.

09:57AM 20 Q. And based on what you knows happens in State court cases,
09:58AM 21 Wayne Anderson would have been represented by a lawyer at
09:58AM 22 that point in time, correct?

09:58AM 23 A. Well, once the felony complaint is lodged, his right to a
09:58AM 24 counsel attaches, so he would have had an attorney.

09:58AM 25 Q. Right. So, you would not have been able to leave that

09:58AM 1 meeting and go call up Wayne Anderson personally --

09:58AM 2 A. No.

09:58AM 3 Q. -- correct?

09:58AM 4 A. That's correct.

09:58AM 5 Q. Right. Because he -- you would be breaking certain
09:58AM 6 rules, correct?

09:58AM 7 A. Correct.

09:58AM 8 Q. Now, to your recollection, the conversation has something
09:58AM 9 to do with Mr. Anderson possibly being able to be used by
09:58AM 10 DEA?

09:58AM 11 A. Yes.

09:58AM 12 Q. Okay. Now, do you recall whether Mr. Bongiovanni
09:58AM 13 specifically said we're going to use him as a confidential
09:58AM 14 informant, or whether it was more focused on what the nature
09:58AM 15 of the investigation was and what Mr. Anderson's exposure
09:58AM 16 was?

09:58AM 17 A. I don't believe that there was a conversation about
09:59AM 18 specifically using him as a confidential informant. It was
09:59AM 19 possibly the potential of, but more the investigation, our
09:59AM 20 arrest, our investigation, would have been possibly related
09:59AM 21 to Organized Crime --

09:59AM 22 Q. Okay.

09:59AM 23 A. -- as the focus of that meeting.

09:59AM 24 Q. So would it be fair to characterize this meeting is sort
09:59AM 25 of an interagency meeting to determine what happened on

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1 November 12th -- 25th, 2012?

2 A. Yes, but also the potential to, again, as I testified

3 yesterday, to maybe take this case to a further level

4 federally, and it would -- it would require the cooperation

5 of Mr. Anderson.

6 Q. But in order to get there, obviously, you have to share

7 some details about what happened as part of this

8 investigation, correct?

9 A. Yeah, details and/or paperwork.

10 Q. Okay. Now, you told us a little bit about the

11 possibility that it could be used for a federal matter,

12 right?

13 A. Correct.

14 Q. Okay. But I think you told us before, though, this is

15 still somewhat generic, there's no specifics proposed,

16 correct?

17 A. Correct.

18 Q. Okay. And, you know, Mr. Bongiovanni never told you

19 something to the effect of we're going to adopt your case,

20 correct?

21 A. Correct.

22 Q. He never leaves the CNET office with any of the physical

23 evidence from the case, correct?

24 A. No evidence, no.

25 Q. Okay. So to your knowledge the drugs, any scales, or

10:00AM 1 anything else that was seized in this, stayed with State
10:00AM 2 police, correct?

10:00AM 3 A. Correct.

10:00AM 4 Q. And then you don't ever really hear from Mr. Bongiovanni
10:00AM 5 again with regard to this incident, correct?

10:00AM 6 A. No, I don't.

10:00AM 7 Q. Okay. Okay. Now, to your knowledge, after these two
10:01AM 8 defendants are arrested, the case proceeds to some degree,
10:01AM 9 correct?

10:01AM 10 A. Yes.

10:01AM 11 Q. Because you end up having to meet with the assigned
10:01AM 12 Assistant District Attorney at least once, correct?

10:01AM 13 A. I don't recall meeting with the assigned District
10:01AM 14 Attorney.

10:01AM 15 Q. Do you recall having any contact with him?

10:01AM 16 A. Not specifically, I mean, about this case.

10:01AM 17 Q. Do you recall the assigned assistant was ADA Paul
10:01AM 18 Williams?

10:01AM 19 A. I do believe it would have been Mr. Williams. He was the
10:01AM 20 chief of narcotics at the time. And we -- any cases we did
10:01AM 21 with the District Attorney at that time was with
10:01AM 22 Mr. Williams.

10:01AM 23 Q. Okay. And in your experience from the law enforcement
10:02AM 24 side before you got to the District Attorney's Office, what
10:02AM 25 office happens once a case is charged is sometimes the

1 prosecutor needs to reach out to the specific law enforcement
2 agents to get some information on the case, correct?

3 A. Correct.

4 Q. Sometimes they might say something like, hey, we're going
5 to be doing a pretrial hearing, we need you to be available
6 on a certain day on testimony?

7 **MR. TRIPI:** Objection. Speculative. 403, 401.

8 **THE COURT:** No overruled.

9 **BY MR. MacKAY:**

10 Q. Did you get my question?

11 A. No, can you repeat it.

12 Q. So sometimes you might be called in to testify for a
13 pretrial hearing?

14 A. That's correct.

15 Q. You could be called in to testify for trial testimony,
16 correct?

17 A. That's correct.

18 Q. And sometimes you can be called because there's a proffer
19 session going on where your presence as the law enforcement
20 agent might be needed, correct?

21 A. Correct.

22 Q. And you've sat in on those before, correct?

23 A. Yes.

24 Q. That's really what we're talking about when there are
25 cooperation -- when cooperation is going on, correct?

1 A. That's correct.

2 Q. A charged defendant comes in with their lawyer, sits down
3 with the prosecutor, and then usually with a law enforcement
4 agent, correct?

5 A. That's correct.

6 Q. And you've done that in cases where you've been the law
7 enforcement agent in that room for a proffer session,
8 correct?

9 A. Yes.

10 Q. And you were never contacted by an Assistant District
11 Attorney's Office in this case saying we're going to do one
12 of those, correct?

13 A. I don't recall being contacted for a proffer on this
14 case. Again, I was assisting, I wasn't what we refer to as
15 the case agent. So, I don't know if I would have been
16 directly contacted about this case.

17 Q. So you're telling us that more likely who would have been
18 contacted if there was any need from input from the -- from
19 the law enforcement side would have been a supervising
20 investigator?

21 **MR. TRIPI:** Objection as to more likely. Again,
22 Judge, that's speculative, lack of personal knowledge.

23 **THE COURT:** No, overruled.

24 **THE WITNESS:** I may have been contacted as a witness
25 investigator in the case, someone that was assisting. The

1 case agent is always the one that brings the paperwork, the
2 evidence logs, any photographs. And there may or may not be
3 assisting investigators, depending if the Assistant District
4 Attorney wanted to interview us, if we picked up a certain
5 piece of evidence, they want to interview us about picking up
6 the evidence at the scene, or if there were some statements
7 made at the time by the defendants, they may want to --

8 **BY MR. MacKAY:**

9 Q. But if I'm understanding you correctly, the point person
10 then at the District Attorney's Office might reach out to is
11 going to be the case agent, correct?

12 A. Correct.

13 Q. And in this matter involving Wayne Anderson, you were not
14 the case agent, correct?

15 A. That's correct.

16 Q. Do you recall who the case agent was in the case?

17 A. I believe it was Investigator Kevin Gallagher. He put
18 the report together.

19 Q. Okay. And then at some point in time, do you come to
20 learn that the case entirely has been resolved?

21 A. Much later, yes.

22 Q. Okay. And was it your understanding that one of the
23 defendants pleaded guilty and received probation?

24 A. Yes.

25 Q. And that would be Mr. Abbate?

10:05AM 1 A. That's correct.

10:05AM 2 Q. And Mr. Anderson was dismissed?

10:05AM 3 A. That's correct.

10:05AM 4 Q. Okay. And again, you've done many cases that involve

10:05AM 5 codefendants over the years, as a law enforcement officer?

10:05AM 6 A. Yes.

10:05AM 7 Q. Not uncommon for a case where multiple defendants are

10:05AM 8 charged that not all of them end in a conviction, correct?

10:05AM 9 A. That's correct.

10:05AM 10 Q. And you were not called, as you can recall, by the

10:06AM 11 District Attorney's Office for any input on how this case was

10:06AM 12 to resolve, correct?

10:06AM 13 A. That's correct.

10:06AM 14 Q. Nobody reached out to you, like Paul Williams, saying we

10:06AM 15 want your input on how to resolve this case, correct?

10:06AM 16 A. That's correct.

10:06AM 17 Q. And obviously, like you said, you never were part of any

10:06AM 18 proffer session in this case, correct?

10:06AM 19 A. Yes, that's correct.

10:06AM 20 Q. And you were never contacted by any attorney claiming to

10:06AM 21 represent Mr. Anderson, correct?

10:06AM 22 A. No, I was not. Or Mr. Abbate.

10:06AM 23 Q. And you never had to go to the State grand jury to

10:06AM 24 testify regarding this case?

10:06AM 25 A. I do not recall attending grand jury on this case.

10:06AM 1 Q. And did you come to learn later, though, that DEA did
10:07AM 2 seize an amount of money connected to this case?

10:07AM 3 A. You know, there -- there is a procedure where DEA has --
10:07AM 4 we will bring the money to DEA for them to seize related to
10:07AM 5 the case and a lot of other cases, but say, it's a seizure
10:07AM 6 program.

10:07AM 7 Q. Okay. So my question to you, though, is do you recall in
10:07AM 8 this specific case there was an amount of money seized by the
10:07AM 9 DEA?

10:07AM 10 A. It would have been very possible that we had DEA seizure,
10:07AM 11 but I don't recall any paperwork or seeing that process.
10:07AM 12 Again, that's something that the case agent and probably a
10:07AM 13 supervisor, because it's currency, would handle.

10:07AM 14 Q. Okay. So if that happened, you don't have any personal
10:07AM 15 knowledge of whether it happened in this case --

10:07AM 16 A. Correct.

10:07AM 17 Q. -- is that fair to say?

10:07AM 18 A. That's correct.

10:07AM 19 Q. Okay. Now, let's go back. Mr. Bongiovanni and his law
10:08AM 20 enforcement partner, Joe Palmieri, meet with you, correct?

10:08AM 21 A. That's correct.

10:08AM 22 Q. And at that point in time, Mr. Anderson has already been
10:08AM 23 charged in State court, correct?

10:08AM 24 A. Yes.

10:08AM 25 Q. The case has been handed over for prosecution, correct?

1 defendants taking a guilty plea, correct?

2 A. Correct.

3 **MR. MacKAY:** Your Honor, can I just have one moment.

4 **THE COURT:** Sure.

5 **MR. MacKAY:** No further questions, Your Honor.

6 **THE COURT:** Redirect?

7 **MR. TRIPI:** Yes, Your Honor, thank you.

8
9 **REDIRECT EXAMINATION BY MR. TRIPI:**

10 Q. Good morning, Mr. O'Rourke.

11 A. Good morning.

12 Q. A few moments ago you were asked some questions regarding
13 State court versus Federal court, some of that interplay
14 where a case goes, correct?

15 A. Yes.

16 Q. In your experience, approximately 29 years of law
17 enforcement experience, generally, do federal charges provide
18 more leverage to induce an individual to cooperate?

19 A. Absolutely.

20 Q. Can you explain why?

21 A. It seems that federally, the penalties are more severe in
22 a lot of cases. And the time a defendant may serve seems to
23 be more severe or lengthier. And it's generally -- we would
24 feel that some of the cases, especially in overdose deaths or
25 those types of things, the federal prosecution is an almost

1 mandatory way to go compared with the state prosecution.

2 Q. In your experience in which venue, state or federal
3 prosecution, are charges reduced more, in your view?

4 **MR. MacKAY:** Objection to lack of personal knowledge.

5 **THE COURT:** Overruled.

6 **THE WITNESS:** My experience, which is mostly in the
7 State court, but I believe in the State court the charges are
8 reduced more often.

9 **BY MR. TRIPI:**

10 Q. If you were looking to flip someone in a drug case, and
11 you had the option to pursue state charges or federal
12 charges, what would you as the investigator choose?

13 A. The federal charges.

14 Q. When you interacted with Mr. Bongiovanni within 48 hours
15 of the Anderson and Abbate arrests, was it your understanding
16 that Mr. Bongiovanni would either seek Mr. Anderson's
17 cooperation or attempt to leverage him with federal charges?

18 A. That was the usual routine in these type of cases. So
19 yes, I assumed that they would be attempting to approach one
20 or both of them to pursue federal charges.

21 Q. And when you were interacting with Mr. Bongiovanni, did
22 you trust what he was saying to you?

23 A. Yeah, of course.

24 Q. Did you have any reason to doubt it?

25 A. No.

10:12AM 1 Q. Is trust important amongst members of law enforcement?

10:12AM 2 A. Yes.

10:12AM 3 Q. Now, earlier during your testimony, Mr. MacKay asked you
10:13AM 4 a series of questions about Mr. Anderson being transported by
10:13AM 5 you, and your conversation with him, and him asking for a
10:13AM 6 lawyer; do you recall those questions?

10:13AM 7 A. Yes.

10:13AM 8 Q. And then he asked you some questions about the fact that
10:13AM 9 when someone asks for a lawyer, you can't speak with him
10:13AM 10 anymore; do you remember that question?

10:13AM 11 A. Yes.

10:13AM 12 Q. But on June 4th, 2020, you testified before a federal
10:13AM 13 grand jury, correct?

10:13AM 14 A. Yes.

10:13AM 15 Q. And you were under oath at that time, right?

10:13AM 16 A. That's correct.

10:13AM 17 Q. And you were asked to describe the conversation that you
10:13AM 18 had with Mr. Anderson while you transported him; is that
10:13AM 19 right?

10:13AM 20 A. Right.

10:13AM 21 Q. And in that conversation, as you relayed to the grand
10:14AM 22 jury under oath, you said Mr. Anderson did not want to
10:14AM 23 cooperate, period.

10:14AM 24 A. Yes.

10:14AM 25 Q. All right. In the grand jury, you didn't say --

24 Were you asked that question, and did you give that

25 answer?

10:15AM 1 A. Yes, I did.

10:15AM 2 Q. So that answer did not involve reference to an attorney,
10:15AM 3 correct?

10:15AM 4 A. Correct.

10:15AM 5 Q. That was mentioned by Mr. MacKay today, correct?

10:15AM 6 A. Yes.

10:15AM 7 **MR. TRIPI:** No further questions.

10:15AM 8 **MR. MacKAY:** Brief recross, Your Honor.

10:15AM 9 **THE COURT:** Sure.

10:15AM 10

10:15AM 11 **RECROSS-EXAMINATION BY MR. MacKAY:**

10:15AM 12 Q. Mr. Anderson shuts the conversation down about going any
10:15AM 13 further about cooperation as you're driving him downtown to
10:15AM 14 central booking; is that fair to say?

10:15AM 15 A. Yes.

10:15AM 16 Q. Whether he invoked an attorney, or whether he said I just
10:15AM 17 don't want to cooperate, as you sit here today you knew that
10:15AM 18 whatever came out of that was he's not cooperating at this
10:15AM 19 point, correct?

10:15AM 20 A. Right.

10:15AM 21 Q. Now you talked about -- I think you phrase you used was
10:15AM 22 mandatory way to go with certain types of prosecutions; am I
10:16AM 23 recalling that correct from your redirect?

10:16AM 24 A. Yes.

10:16AM 25 Q. Now, law enforcement doesn't necessarily get to decide

1 which direction charges go in, correct?

2 A. That's correct.

3 Q. That's for the prosecutors both, state and federal?

4 **MR. TRIPI:** Objection. Asked and answered on his
5 direct.

6 **THE COURT:** No, overruled.

7 **BY MR. MacKAY:**

8 Q. That's for either the state or federal prosecutors to
9 decide, correct?

10 A. That's correct.

11 Q. Because they are the -- the United States or the People's
12 representatives in court, correct?

13 A. Correct.

14 Q. And to your knowledge, they have the discretion to decide
15 which charges to prosecute, correct?

16 A. Correct.

17 Q. And how to resolve those cases, correct?

18 A. Correct. Sometimes supervisory personnel from our agency
19 will say we're not taking this federal, or we're not taking
20 this state. We may contact the Attorney General's Office.
21 So, they get a little bit of discretion and direction.

22 Q. But ultimately, prosecutors make the final call because
23 they're the ones in court, correct?

24 A. Correct.

25 Q. And you talked a little bit about how State courts, most

1 of your experience is over there, correct?

2 A. Yes.

3 Q. And fair to say State courts are busy courts, correct?

4 A. Yes.

5 Q. There's a lot of prosecutions in any one county, correct?

6 A. That's correct.

7 Q. And Erie County is a populous county, correct?

8 A. Yes.

9 Q. A lot of criminal charges being filed throughout the
10 year, correct?

11 A. Yes.

12 Q. You now work in the Erie County District Attorney's
13 Office. Fair to say that's a very busy office, correct?

14 A. Yes, it is.

15 Q. Feels even overwhelmed, correct?

16 **MR. TRIPI:** Objection as to how the Court feels.

17 **THE COURT:** Yeah, sustained.

18 **BY MR. MacKAY:**

19 Q. Has your experience as an investigator in that office
20 been that sometimes you can't even keep up with the work?

21 **MR. TRIPI:** Objection. He's asking about his
22 experience as a DA's investigator, Your Honor.

23 **MR. MacKAY:** In his context at the DA's office.

24 **THE COURT:** Yeah, sustained -- or, overruled. Go
25 ahead.

4 BY MR. MacKAY:

8	A. Yes.
---	---------

12	A. Yes.
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14 **THE COURT:** Anything further, Mr. Tripi?

16 **THE COURT:** You can step down, sir, thank you.

18 (Witness excused at 10:18 a.m.)

19 (Excerpt concluded at 10:18 a.m.)

21 In accordance with 28, U.S.C., 753(b), I certify that
these original notes are a true and correct record of
22 proceedings in the United States District Court for the
Western District of New York on February 21, 2024.

24	<u>s/ Ann M. Sawyer</u>
25	Ann M. Sawyer, FCRR, RPR, CRR Official Court Reporter U.S.D.C., W.D.N.Y.

INDEXEXAMINATION OF MICHAEL O'ROURKE - DAY 2FEBRUARY 21, 2024W I T N E S SP A G E

M I C H A E L O ' R O U R K E

2

CROSS-EXAMINATION BY MR. MacKAY:

2

REDIRECT EXAMINATION BY MR. TRIPI:

25

RE-CROSS-EXAMINATION BY MR. MacKAY:

29